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February 2, 2016

### VIA ECF AND ELECTRONIC MAIL TO bernstein.chambers@nysb.uscourts.gov

Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, Room 723  
New York, New York 10004-1408

Re: *Securities Investor Corporation v. Bernard L. Madoff Investment Securities LLC*,  
Adv. Pro. No. 08-01789 (SMB) — *Picard v. Shapiro, et al.*, Adv. Pro. No. 10-05383 (SMB)

Dear Judge Bernstein:

We are counsel to the parties in the above-referenced adversary proceeding. We write to you regarding the submission of a revised proposed order to be entered by this Court in connection with the Memorandum Decision Granting in Part and Denying in Part Defendants' Motion to Dismiss the Trustee's Second Amended Complaint (Liquidation Proceeding, ECF No. 12130).

During a conference recently held in your chambers on the proposed order, you suggested that the parties submit a new proposed order wherein your rulings as to Counts II through VII of the Second Amended Complaint would be collectively addressed in two paragraphs. We enclose herewith for the Court's consideration a proposed order which adopts that suggestion.<sup>1</sup>

However, counsel for Defendants believes the language of the order, partially quoted in the footnote below, *could* be viewed as ambiguous. In Counts II through VII, Plaintiff seeks to avoid transfers during various periods (*i.e.*, Count II seeks to avoid "two-year" transfers, Counts

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<sup>1</sup> Specifically, Paragraph No. 3 of the enclosed order reads: "As to **Count II** through **VII**, the Motion to Dismiss is **DENIED** with respect to: (a) S&R and Stanley Shapiro and Renee Shapiro, individually and as general partners of S&R, with respect to all transfers they received in connection with Account Nos. 103009, 103039, 103058, 103069, 1SH014 (formerly 103013), and 1SH172 . . ."

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III through VI seek to avoid “six-year” transfers, Count VII seeks to avoid “life-time” transfers),<sup>2</sup> and therefore Defendants’ counsel believes those counts should be addressed in separate paragraphs as opposed to two consolidated ones. We enclose herewith an alternative proposed order for Court’s consideration which addresses the Court’s rulings as to Count II, Counts III through VI, and Count VII in separate paragraphs.

While Defendants’ counsel prefers that the Court enter the second of the proposed orders for the reasons described above, Plaintiff’s counsel is amenable to entry of either of the proposed orders. The undersigned are available to address any questions or concerns that the Court may have regarding the enclosed alternative proposed orders.

Respectfully submitted,

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Respectfully submitted,

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<sup>2</sup> For example, Plaintiff seeks to avoid transfers made in connection with Account No. 103009 only in Count VII since all of the alleged transfers occurred more than six years prior to the Filing Date. The proposed order *could* be viewed to suggest that Plaintiff seeks to avoid these transfers in Counts II through VI as well.